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ABSTRACT

The increasing impact of judicial and legislative intervention at all levels of school operations make it necessary for educators to be more aware of their legal rights and liabilities. Few inservice and preservice teacher education programs in Florida provide legal education for teachers, and a study showed that teachers are largely uninformed of the legal aspects of their profession. Many educational situations are covered by Florida school laws, such as: (1) Is there a law which states that teachers must maintain good order in the classroom? (Yes): (2) Is corporal punishment administered by teachers legal? (Yes): (3) Do public school students have the right to privacy? (Yes): (4) Can the state revoke or suspend teacher certificates? (Yes, for specific reasons): and (5) Can a teacher be charged with negligence if a student is injured in his or her classroom? (It depends). There is a legal ingredient to almost every educational situation, yet no aspect of teacher education has been so neglected. (FG)

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LEGAL LITERACY:

A NECESSITY FOR FLORIDA PRESERVICE/INSERVICE TEACHERS

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LEGAL LITERACY: A NECESSITY FOR FLORIDA PRESERVICE/INSERVICE TEACHERS

Alexis de Tocqueville (1945), in describing and interpreting the American scene and character, pointed out that ultimately all important social issues in the United States become judicial issues (p. 280). Nowhere is de Tocqueville's perception more evident than in the field of education where, over the past 20 years, the legislatures and courts have shed their traditional reluctance to intervene in the substance and processes of school operations.

Before the mid-1950s, approximately 100 cases which involved educational matters had been initiated in the federal courts. Litigation at the federal level, since the mid-1950s, has increased 100% with many cases finding their way to the Supreme Court. (Hogan, 1974, Chap. 2)

Since the 1954 landmark Supreme Court decision Brown v. Board of Education of Topeka 347 U. S. 483, 493 (1954), in which Justice Earl Brown stated that, "education is perhaps the most important function of state and local governments", it has been difficult to name more than a few areas of public school education which have remained untouched by judicial and legislative intervention. Today the impact of this judicial and legislative intervention is evidenced at all levels of school operations and by everyone, professional and nonprofessional, who participates in the public school enterprise.

One is reminded that every day in the more than 60,000 public schools of the United States that approximately 45 million pupils and over 2.5 million teachers, administrators, and other school professionals meet, "in an atmosphere charged with a growing awareneness of legal rights, duties, and remedies". (Hazard, 1977, p. 3). Given that judicial and legislative intervention in public schools has, indeed, made these litigious times and given the numbers of daily participants in public education, one can state almost with certainty that a teacher will become involved in at least one legal case during a career spanning 15 years. Existing data have indicated that during the 1970s one out of every five teachers was either the plaintiff, defendant, or grievant in a job-realated action. (Nolte, 1978, p. 11)

As the complexity of state and federal rules, regulations, guidelines, and court decisions have continued to proliferate, it has become imperative that professional educators (teachers) be informed as to their legal rights and liabilities.

In a recent study conducted in Florida, public school teachers, administrators, school board attorneys, and directors of the 25 state-approved teacher preparation programs were asked to indicate the degree to which a need exists in Florida to provide public school teachers, at both the preservice and inservice levels, with knowledge relative to the legal implications of their professional roles. This study also investigated the extent to which preservice and inservice teacher

education programs in Florida were providing educational opportunities for teachers to become knowledgeable about the legal implications of their professional roles.

The data revealed that few-if any-undergraduate teacher preparation programs have been or are providing such educational opportunities. Further, 78% of the teachers surveyed indicated that they had not received any legal education at the undergraduate level. In addition, The Florida Master Inservice Plans indicated that only 42 components centering on the legal aspects of teaching were included in the over 7,410 proposed inservice components in the state of Florida. Over 80% of the teachers participating in this study indicated that they had not participated in an inservice workshop related to the legal aspects of teaching during their professional careers. (Ringenberger, 1981, p. 281)

The findings of the study invite this question of teacher educators, "Is it, in this era of the educational lawsuit, defensible or even justifiable to send preservice teachers into the field legally unaware or to fail to provide opportunities for inservice teachers to keep legally abreast of the latest statutes and court decisions which affect them professionally?" Ignorance can never be considered as a desired state and a public school teacher in Florida should never have to say, "I don't know that much about educational law to even ask a question," or to reveal, "I have not been properly informed." The pleas of ignorance negates legal

accountability and has never been accepted by any court as a defense. In this age of literacy and accountability, teachers must be educated in the legal implications of their professional roles.

Although it is impossible to address all areas of the law which affect and impact upon Florida teachers, some of the basic legal concepts of school law are presented in the following question and answer format. (This information is offered for the purpose of increasing awareness and not as legal advice)

QUESTION: Is there a law which states that teachers must maintain good order in the classroom?

ANSWER: Yes. Section 232.27 of the Florida Statutes (1980) states that each teacher shall keep good order in the classroom and in other places in which the teacher is assigned to be in charge of students. It should be noted that teachers have been given authority to control and discipline students.

QUESTION: Do teachers have the right to administer corporal punishment?

ANSWER: Yes. Although many of today's educators have expressed concern regarding the efficacy of physically punishing students, Florida teachers, subject to the rules of the district school board,

have been given the authority, by law, to use corporal punishment when disciplining students. (Section 232.27, Florida Statutes (1980) Teachers should consult their respective school district's policy handbook before administering any type of physical punishment.

QUESTION: Do students attending a public school have the right to privacy?

ANSWER: Yes. The Family Education Rights and Privacy Act, 1974 (Buckley/Pell Amendment) attempts to protect the rights of parents and students regarding confidential records and information. Only teachers who have a legitimate educational interest should be permitted to review students' records. Teachers should not write personal notes about students for the purpose of communicating information to other educators. Further, teachers should not evaluate or make statements about students except as it becomes their professional prerogative based upon their expertise. For example, a teacher should write, "Johnny is a schizophrenic" only if that teacher is a licensed psychologist and has been trained in the detection of schizophrenia.

QUESTION: Since the state has the power to issue teacher certificates, does the state have the power to revoke or suspend a certificate?

ANSWER: Yes. Disciplinary measures may be imposed against Florida teachers' certificates for the following reasons:

1. Certificate obtained fraudulently.
2. Incompetence.
3. Gross immorality or an act involving moral turpitude.
4. Revocation of certificate in another state.
5. Conviction of a misdemeanor, felony, or criminal charge.
6. Personal conduct which seriously reduces effectiveness as a public school employee.
7. Refusal to comply with State Board of Education regulations or the regulations of the district school board.
8. The plea of guilty in any court or the decision of guilty by any court.
9. The forfeiture of a bond in any court of law. (Section 231.28, Florida Statutes (1979)

Penalties may include denial of a teaching certificate, three-year suspension, ten-year or permanent revocation of certificate, written reprimand,

imposition of a fine of up to $2,000, restriction of the scope of practice, or placement of the offender on probation which may include requiring additional college courses or other work.

QUESTION: Does a teacher have the right to defend himself/herself against an attack by a student?

ANSWER: Yes. If it can be reasonable deduced that a student is about to attack a teacher, the teacher has the same right as any other citizen to protect himself/herself from attack by using only that force which is reasonably necessary to end the threat.

QUESTION: If a student is injured while he or she is in my classroom or under my supervision, can I be charged with negligence?

ANSWER: It depends. What is considered to be negligence in one case may not necessarily be considered negligence in the next case. Teachers are expected to exercise adequate due care, foreseeability, and supervision. What has constituted due care and adequate supervision has been largely commensurate with the circumstances. However, the negligent action which has been most frequently reflected in charges contained in lawsuits (torts) has been the failure to supervise.

> Teachers should never expose students to unreasonable risk and should give adequate instruction in the hazards involved in classroom activities and field trips. Above all, teachers should not leave their classrooms unsupervised.

The potential for aggrieved parents and students to seek relief in the courts has presented public school teachers with a continuously present reality with which they must be prepared to cope. This potential has been evidenced in the fact that not only has the public become more legally aware, but that over 2.5 million teachers--83,000 in Florida--work in public school classrooms.

Basically, there is a legal ingredient in almost every educational decision--whether it involves corporal punishment of a student, record keeping, searching of a student's desk, or use of a school building. In some educational situations, the legal ingredient is the crucial factor; in others, it is not. Yet, there is probably no area in the entire field of teacher preparation which has been more neglected.

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